UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,691	07/14/2003	Samuel Clayton Muggride	33277/US	3743

7590 12/22/2005

DORSEY & WHITNEY LLP
Intellectual Property Department
Suite 1500
50 South Sixth Steeet
Minneapolis, MN 55402-1498

EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/617,691	MUGGRIDE ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 October 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2,3,5-15,17,18,20-28 and 36-44* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2,3,5-15,17-18,20-28,36-44* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claims 6,12,26,38 and 42 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 is indefinite because it depends from claim 1 which has been cancelled.

In claim 12, what does applicant mean by " depositing said starch and gum within the IQF fruit"? The suspension is deposited over the fruit; thus, how can the starch and gum migrate to be within the fruit? What does applicant mean by " within the IQF fruit"?

The rejection of claims 12, 26 and 42 is maintained because the amendment does not make the claims clearer and the claims still have the problem cited in the previous office action.

In claim 38, the phrase " said adding steps" lacks antecedent basis and is unclear because it is not known what adding step the claim is referring to.

The rejection of claim 6 and 38 is necessitated by amendment.

Claims 1-2,3,5-15,17-18,20-28, 36-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admission of prior art in view of Newman and Wallin et al.

Applicant discloses on page 1 of the specification the conventional step of making frozen fruit filled pie. The process comprises the steps of mixing ingredients to create a pie dough, form the dough into a shell, adding IQF fruit into the shell and applying a top sheet of pie dough over the pie shell. The pie then conveyed through a freezer and to packaging stations. The fruits remain frozen.

The prior art does not disclose adding a suspension comprising ingredients as set forth in claims 5,20 and 29 over the fruit and the steps for forming the suspension.

Neumann discloses a flavoring suspension which is used in pastries. The suspension comprises 13.6% sugar, 2.3% modified starch, .25% xanthan gum, 45.46% high fructose corn syrup and flavoring. The suspension is made according to steps set forth on col. 7 lines 38-65. Neumann teaches the steps of blending the drying ingredients, metering the liquid sweetener into a kettle and adding the dried ingredients to the liquid sweetener.

Wallin et al disclose a filling suspension. They teach to increase the amount of starch to adjust the viscosity of the suspension. (see col. 5 lines 1-22)

The suspension disclosed by Neumann can be used in pastries; thus, it would have been obvious to one skilled in the art to use the flavoring suspension in pie because pie is a type of pastry. It would have been obvious to one skilled in the art to use the suspension of Neumann over the fruit in forming the pie to obtain flavoring and to eliminate the steps of adding the dried ingredients as set forth in the prior art method. It would have been obvious to one skilled in the art to mix the dry ingredients with the syrup to form a uniform and homogeneous mixture. The suspension contains liquid, dry sweetnener, minor ingredient , flavors and stabilizers which are the same ingredients that are added to the fruit in the prior art method; thus, its addition to the fruit is not contraindicated. Neumann does not disclose the amount of starch claimed. It would have been obvious to one skilled in the art to increase the amount of starch in the suspension when desiring to increase the viscosity of the suspension. The use of

starch to modify the viscosity is known in the art as shown by Wallin et al. It would have been obvious to one skilled in the art to adjust the viscosity profile of the suspension depending upon it intended use.

In the response filed 10/12/05, applicant argues the flavoring topping in Neumann is not deposited over IQF because IQF is not disclosed in Neumann. It is recognized that Neumann does not disclose IQF; however, the rejection is not based on Neumann alone. The rejection is based on the combination of prior art method and Neumann. Neumann discloses a flavoring composition that can be added to a variety of food products including pastries. Pie is a pastry. It is well known in the art and applicant also discloses on page 1 that fruit pie is made by adding fruit to a pie shell along with other ingredients such as liquid sweetener, dry sweetener, stabilizer, flavoring, etc.. The other ingredients form a syrup or suspension in which the fruit is suspended. Thus, adding the flavoring composition of Neumann to the prior art method of making pie would have been obvious because the flavoring composition comprises the same ingredients that are typically added to pie and the composition will give flavoring to the pie. Using the Neumann composition will eliminate the additions of the other ingredients individually which will save time. Applicant argues this reasoning is based on hindsight. The examiner respectfully disagrees. Neumann teaches the flavoring composition can be added to many food products, is added on top on food product and comprises ingredients which are commonly added to pies. Thus, one skilled in the art in view of Neumann and the common steps known in making pie would readily substitute the flavoring composition in place of adding the ingredients

individually because the same end result is obtained. Substitution is commonly done in cooking and a substitution that quickens the process would have been readily applied. With respect to the Wallin reference, applicant makes the same argument as applied to the Neumann reference. The Wallin reference is only relied upon to show that the amount of starch in a filling composition can be adjusted to adjust the viscosity of the composition. It would have been obvious to one skilled in the art to increase the amount of starch when one wants a thicker or more viscous composition. Applicant does not argue why this would not have been obvious. It is recognized that Wallin does not teach adding IQF into a pie shell, depositing the suspension or a suspension having about 38-88% liquid sweetener. However, the Wallin reference is not used alone in the rejection. The steps of making a pie shells, depositing IQF into the pie and applying a top dough to the pie shell are known prior art steps. The rejection is based on applicant's admission of prior art in view of Neumann and Wallin.

Applicant's arguments filed Oct. 12, 05 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 20, 2005

LIEN TRAN
PRIMARY EXAMINER
Group 1700